
UTAH LABOR COMMISSION

RICARDO CASTRO,

Petitioner,

vs.

**GEL, INC. and WORKERS
COMPENSATION FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION, WITH
MODIFICATIONS**

Case No. 06-0975

Petitioner, Ricardo Castro, and Respondents, Gel, Inc. and its insurance carrier, Workers Compensation Fund, (referred to jointly as "Gel") each ask the Labor Commission to review Administrative Law Judge Marlowe's decision regarding Mr. Castro's claim against Gel for benefits under the Utah Workers' Compensation Act, Utah Code Annotated Title 34A, Chapter 2.

The Labor Commission exercises jurisdiction over these motions for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUES PRESENTED

Mr. Castro filed an application for hearing with the Commission's Adjudication Division in which he claimed workers' compensation benefits for injuries to his chest, neck and upper extremity allegedly caused by a work accident at Gel on October 14, 2004. Mr. Castro subsequently filed a second application claiming benefits for low-back injuries allegedly caused by a second work accident at Gel on August 22, 2005. Judge Marlowe held an evidentiary hearing on both claims and then referred the medical aspects of the claims to an impartial panel of medical experts. Upon receipt of the panel's report, Judge Marlowe accepted the panel's opinions and awarded benefits accordingly. Among other things, Judge Marlowe ordered Gel to pay permanent partial disability compensation to Mr. Castro for a 5% permanent whole person impairment, to be computed at the rate of \$376 per week. Judge Marlowe dismissed Mr. Castro's claim for benefits for the October 2004 accident.

Gel's motion for review of Judge Marlowe's decision contends that Gel has already paid permanent partial disability compensation to Mr. Castro for a 3% permanent whole person impairment and, therefore, is entitled to deduct that amount from the permanent partial disability compensation awarded by Judge Marlowe's decision. Gel also argues that Mr. Castro's attorney should be awarded fees only on the difference in permanent partial disability compensation between what Gel had previously paid and what was awarded by Judge Marlowe's decision.

Mr. Castro's response to Gel's motion for review agrees with Gel's foregoing arguments, but argues that his rate of permanent partial disability compensation should be \$377 per week, rather than \$376 as awarded by Judge Marlowe. Mr. Castro has also filed a motion for review in which he argues that the preponderance of medical evidence supports his claim for additional workers' compensation benefits for his October 2004 injury.

DISCUSSION

As a preliminary matter, the Commission notes Mr. Castro's assertion that his permanent partial disability compensation should be paid at the rate of \$377 per week, rather than \$376 per week. Section 34A-2-409(3) of the Utah Workers' Compensation Act provides that "[a]fter the weekly compensation is computed, it shall be rounded **to the nearest dollar**." (Emphasis added.) In Mr. Castro's case, his computed weekly compensation rate is \$366.68. Rounding that amount to "the nearest dollar" requires rounding up to \$367. Mr. Castro is entitled an additional \$10 per week for his dependents, resulting in the total weekly compensation amount of \$377.

The parties agree that, because Gel has already paid Mr. Castro permanent partial disability compensation for a 3% impairment, Gel is entitled to deduct that payment from the 5% permanent partial disability compensation awarded by Judge Marlowe. Since Mr. Castro has already received payment of \$3,528.72 for his 3% impairment, and is entitled to receive a total of \$5,881.20 for his 5% impairment, he is now entitled to receive an additional \$2,352.48. And, as agreed by the parties and required by the Commission's Rule 602-2-4, Mr. Castro's attorney's fee must be computed at 25% of this latter amount, for an attorney fee of \$588.12.

The final issue before the Commission is Mr. Castro's assertion that the preponderance of medical evidence supports his claim for additional workers' compensation benefits for his October 2004 work injury. While the opinion of Mr. Castro's treating physician supports this argument, the Commission finds the medical panel's contrary opinion persuasive. The medical panel is free from any connection to either party. It reviewed all the medical records and personally examined Mr. Castro. Furthermore, the panel had the opportunity to review and consider the opinions of all the other medical experts who have been involved in this matter. For these reasons, the Commission accepts the medical panel's opinion and concludes that no workers' compensation benefits are due for the October 2004 accident.

ORDER

The Commission modifies the second and third paragraphs of Judge Marlowe's order, found at pages six and seven of her decision of August 29, 2008, as follows:

IT IS FURTHER ORDERED GEL, Inc. and/or the Workers Compensation Fund pay permanent partial disability compensation to Mr. Castro for a 5% whole person impairment rating in the amount of \$5,881.20, less the permanent partial disability compensation previously paid in the amount of \$3,528.72, leaving a balance now due of \$2,352.48, payable in a lump sum, plus interest at eight percent (8%) per annum, under U.C.A. § 34A-2-420(3) and Utah Administrative Code, Rule 612-1-5.

IT IS FURTHER ORDERED that attorney's fees of \$588.12, plus twenty-five percent (25%) of the interest awarded herein, shall be deducted from the compensation awarded above to Ricardo Castro, and sent directly to Craig McAllister, according to U.C.A. § 34A-1-309 and U.A.C. Rule 602-2-4.

The Commission affirms the remaining portions of Judge Marlowe's decision. It is so ordered.

Dated this 31st day of December, 2008.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of te of this order.